

1 CAMPEAU GOODSELL SMITH, L.C.
2 WILLIAM J. HEALY, #146158
3 440 N. 1st Street, Suite 100
4 San Jose, California 95112
5 Telephone: (408) 295-9555
6 Facsimile: (408) 295-6606

7
8 ATTORNEYS FOR
9 The Saunders Company

10
11
12 UNITED STATES BANKRUPTCY COURT
13
14 NORTHERN DISTRICT OF CALIFORNIA

15 San Jose Division

16
17 In re:) Case No. 14-51043
18 Louis Charles Rocha,) CHAPTER 13
19) R.S. No.: CGS-01
20 Debtor.) MOTION FOR RELIEF
21) FROM AUTOMATIC STAY
22)
23) Date: April 2, 2014
24) Time: 3:00 p.m.
25) Location:
26) United States Bankruptcy Court
27) Rm. 3070
28) 280 South 1st St.
Judge: Honorable Charles Novack
United States Bankruptcy Court
Rm. 3070
280 South 1st St.
San Jose, CA 95113

29
30 The Saunders Company (“TSC” or “Moving Party”), secured creditor, moves this court
31 for relief from stay pursuant to 11 U.S.C. 105, 362 (d)(1), (2)(A) and (B), 362 (d)(4)(B), and
32 362 (f) of the United States Bankruptcy Code, Rule 4001 of the Federal Rules of Bankruptcy
33 Procedure, and Bankruptcy Local Rule 4001-1 of the United States Bankruptcy Court for the
34 Northern District of California with respect to real property commonly known as 304 & 306
35 S. First Street, King City, CA (A.P.N. 026-241-008)(“Real Property” or “Subject Property”)

MOTION FOR RELIEF FROM AUTOMATIC STAY

1 so TSC may proceed to exercise its rights and remedies under its note, deed of trust, and state
2 law and recovery possession, including but not limited to foreclosure or trustee's sale and
3 unlawful detainer ("Motion") as follows:

4 **I. Introduction.**

5 **A. Debtor's Relationship to The Saunders Company.**

6 On November 20, 2007 TSC, as lender, and Debtor Louis C. Rocha ("Debtor")¹ and
7 Gwen S. Rocha, husband and wife as joint tenants, as borrowers, entered into a Note Secured
8 By Deed of Trust Straight Note whereby TSC lent the borrowers \$525,000 at ten and one
9 half percent (10.5%) with payments of \$4,593.75 due on the 1st of the month beginning on
10 January 1, 2008 and continuing through December 1, 2010 at which time the unpaid balance,
11 including principal and interest, becomes due and payable ("Promissory Note"). On
12 December 1, 2009 and on December 1, 2010 Modification of Note Agreements were entered into
13 whereby, among other things, the interest rate was reduced to seven percent (7%) and the
14 maturity date was extended to December 1, 2012. The Promissory Note bears interest at fifteen
15 percent (15%) after maturity. (Exhibit A²)

16 The Promissory Note was secured by a Deed of Trust And Assignment of Rents
17 recorded with the Monterey County Recorder on November 29, 2007
18 Document#2007089381) ("Deed of Trust") relative to 109 Pearl Street, King City, CA
19 (A.P.N. 026-241-002), 304 + 306 S. First Street, King City, CA (A.P.N. 026-241-008)
20 ("Subject Property"), 107 Pearl Street, King City, CA (A.P.N. 026-241-009), and 324 S. First
21 Street, King City, CA (A.P.N. 026-242-001)(Exhibit B).

22 The Deed of Trust required, among other things, for the borrowers to maintain the
23 properties, maintain insurance, and pay real property taxes. Debtor did not and does not
24 reside at the Subject Property. Prior to Debtor's current bankruptcy TSC had foreclosed on
25 all collateral except the Subject Property.

26 //

27
28 ¹Also known as Louis C. Rocha and Louie C. Rocha.

²All exhibits are attached to the supporting declaration.

1 **B. Debtor's Prior Bankruptcies³.**

2 On September 23, 2011 Debtor's first Chapter 13 Bankruptcy, In re Louis Rocha,
3 U.S.B.C. (ND CA) #11-58862 was filed ("First Bankruptcy"). The First Bankruptcy did not
4 include any reference to TSC, including on the Creditor Matrix. The First Bankruptcy was
5 dismissed on October 19, 2011 for Debtor's failure to file schedules and failure to comply
6 with the court's order to file schedules. TSC was not aware of the First Bankruptcy until it
7 received belated notice of the Second Bankruptcy (defined below).

8 On July 10, 2012 Debtor's second Chapter 13 Bankruptcy, In re Louie Charles Rocha,
9 U.S.B.C. (ND CA) #12-55134, was filed ("Second Bankruptcy"). Debtor's Second
10 Bankruptcy, like the First Bankruptcy, was filed without any reference to TSC and without
11 notice to TSC. On August 6, 2012 Debtor filed an amendment to his Creditor Matrix adding
12 TSC as a creditor, on August 17, 2012 TSC received notice of Debtor's Second Bankruptcy
13 via certified mail, and on August 23, 2012 Debtor filed his schedules, Creditor Matrix, and
14 Chapter 13 Plan—none of which made any references to TSC or the related Promissory Note,
15 Deed of Trust, real properties, Trustee's Deeds on all but the Subject Property, and/or
16 pending unlawful detainer action.

17 **C. Current Status of Promissory Note, Deed of Trust, and Subject Property.**

18 **1) Matured Promissory Note.**

19 The Promissory Note matured on December 1, 2012. Debtor has not paid on the
20 Promissory Note since January 2012. As of April 1, 2014 the outstanding balance on the
21 Promissory Note will be \$128,308.79 (Exhibit C). The Subject Property has little, if any,
22 equity.

23 **2) Scheduled Trustee Sale.**

24 The trustee's sale on the Deed of Trust and the Subject Property was scheduled for
25 March 12, 2014.

26
27 ³The court may take judicial notice of the Debtor's prior bankruptcy filings (Fed.Rul.Evid. 201)
28 and such is summarized in the Court's Docket Entry dated 03/1/14 as Debtor previously filed a
Chapter 13 on 09/23/11 which was dismissed on 10/19/11 for failure to file information (USBC
(CA ND) #11-58862) and Chapter 13 on 07/10/12 which was dismissed on 08/30/12 (USBC
(CA ND) #12-55134) for failure to file information.

1 **3) Outstanding and Unpaid Real Property Taxes.**

2 Debtor has not paid the required real property taxes on the Subject Property for
3 2011/2012, 2012/2013, and 2013/2014 as required by law and the Deed of Trust. According
4 to the Monterey County Tax Assessor the total outstanding balance through March 31, 2014
5 is \$4,151.75 (Exhibit D).

6 **4) Lack of Required Insurance.**

7 Debtor does not maintain the insurance on the Subject Property as required by
8 the Deed of Trust.

9 **5) Maintenance and Condition of Real Property.**

10 Debtor does not maintain the Subject Property as required by the Deed of Trust.

11 **(a) King City Violations.**

12 The Subject Property is subject to outstanding violations from King City. Debtor was
13 sent a First Notice of Violation on October 6, 2010, a Second Notice of Violation on
14 November 22, 2010, a Final Notice of Violation on September 19, 2011, and a Request to
15 Appear on January 21, 2014 wherein the City Manager placed the matter on the January 28,
16 2014 agenda and requested the property owner appear before the City Council on January 28,
17 2014 in an effort to clear these violations. TSC believes these violations have not been
18 cleared. (Exhibit E).

19 **(b) Unrepaired Collision Damage.**

20 The building on the Subject Property sustained approximately \$20,000 in damages as a
21 result of a motor vehicle crashing into the building in September 2013. This damage included
22 damage to the main structural member, a door, large window and the brick facade. This
23 damage has not been repaired. TSC understands that Debtor has not submitted pictures or an
24 estimate of damages to the insurer for the motorist/vehicle owner. The related Traffic
25 Collision Report #13-1053 and photos of the property damages are attached as Exhibit F

26 **© Additional Property Damage and Lack of Maintenance.**

27 There is also significant damage done to the back wall as a result of a forklift

28

1 that has not been repaired and there are numerous other broken windows and interior damage
2 to the building.

3 **D. The Deed of Trust Provides That The Insurance Proceeds For The Collision**
4 **Damage Belong to TSC.**

5 The Deed of Trust (Exhibit B) provides, in pertinent part, that “. . . The amount
6 collected under any fire or other insurance policy may be applied by Beneficiary upon any
7 indebtedness secured hereby & in such order as Beneficiary may determine, or at the option
8 of Beneficiary the entire amount so collected or any part thereof may be released to Trustor .
9 . . .”

10 TSC demands, pursuant to the Deed of Trust, that the rights and proceeds of the claim
11 for property damage caused by the collision (subsection (b) above) be turned over to TSC.

12 **II. The Saunders Company Is Entitled to Immediate Relief from The Automatic Stay**
13 **As to The Debtor, The Debtor’s Estate or Debtor’s Property, and the Co-Debtor.**

14 **A. The Court Has Ample Authority to Grant Relief From the Automatic Stay.**

15 The court’s authority to grant relief from stay may be found in, inter alia, 11 U.S.C. 362
16 and 11 U.S.C. 105.

17 11 U.S.C. 362 (d) provides, in pertinent part, that:

18 “On request of a party in interest and after notice and a hearing, the court shall
19 grant relief from the stay provided under subsection (a) of this section, such as by
20 terminating, annulling, modifying, or conditioning such stay—

21 (1) for cause, including the lack of adequate protection of an interest in
22 property of such party in interest;
22 (2) with respect to a stay of an act against property under subsection (a) of
this section, if—

23 (A) the debtor does not have an equity in such property; and
24 (B) such property is not necessary to an effective reorganization”

25 In addition, 11 U.S.C. 362 (d) (4) provides, in pertinent part, that:

26 “with respect to a stay of an act against real property under subsection (a), by a
27 creditor whose claim is secured by an interest in such real property, if the court
finds that the filing of the petition was part of a scheme to delay, hinder, or
defraud creditors that involved either—

28 (A) transfer of all or part ownership of, or other interest in, such real
property without the consent of the secured creditor or court approval; or

(B) multiple bankruptcy filings affecting such real property”

Further, 11 U.S.C. 362 (f) provides, in pertinent part, that:

“Upon request of a party in interest, the court, with or without a hearing, shall grant such relief from the stay provided under subsection (a) of this section as is necessary to prevent irreparable damage to the interest of an entity in property, if such interest will suffer such damage before there is an opportunity for notice and a hearing under subsection (d) or (e) of this section.”

B. TSC Is Entitled to Relief From Stay.

7 TSC is entitled to relief from stay pursuant to 11 U.S.C. 362 (d)(1), (2)(A) and (B), 362
8 (d)(4)(B), and 362 (f). The Promissory Note fully matured in December 2012, Debtor long
9 ago stopped paying the Promissory Note, the Debtor long ago stopped (if he ever started)
10 paying real property taxes, the Subject Property is not insured as required by the Deed of
11 Trust, Debtor does not maintain the Subject Property, TSC lacks adequate protection, the
12 Debtor does not have equity in the Subject Property, and the Subject Property is not
13 necessary to an effective reorganization.

In addition, Debtor has filed multiple failed bankruptcies (3 in less than 3 years) and each was filed specifically to prevent foreclosures, including affecting TSC's rights relative to the Subject Property. In fact, Debtor's Second Bankruptcy caused TSC substantial harm--- TSC's only discovered the Second Bankruptcy during its pending unlawful detainer action and after Debtor had stopped paying TSC, stopped paying real property taxes, failed to insure the real property, collected but failed to turn over rents, failed to maintain the real property, failed to include TSC in either the First Bankruptcy or Second Bankruptcy, failed to file any schedules in the First Bankruptcy, and then belatedly filed schedules and a plan in the Second Bankruptcy that omitted any reference to TSC.

23 Further, immediate relief from stay is necessary to prevent irreparable damages to the
24 Subject Property resulting from Debtor's failure to maintain the property and failure to insure
25 the property.

C. TSC Is Entitled to a Waiver of Rule 4001.

27 For the reasons discussed hereinabove, TSC is entitled to a waiver of Federal Rules of
28 Bankruptcy Procedure, Rule 4001 (a)(3).

1 **III. Conclusion.**

2 WHEREFORE, Moving Party respectfully requests that the court issue an order
3 granting relief from stay as to Debtor, Debtor's estate or property of the estate, the Subject
4 Property, and the co-debtor, waiving the provisions of Federal Rules of Bankruptcy
5 Procedure, Rule 4001 (a)(3), and ordering such other and further relief as is just.

6 Dated: March 17, 2014

CAMPEAU GOODSELL SMITH

/s/ William J. Healy

William J. Healy

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28